THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 12058 of 2007

12.06.2007

Between:

S.Trimurthy,
Chilkalguda, Hyderabad

… Petitioner

And:

Municipal Corporation of Hyderabad,
Hyderabad and others

… Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 12058 of 2007

ORAL ORDER:

The writ petition is filed challenging the notice dated 17.6.2006 issued u/sec. 456 of the Hyderabad Municipal Corporation Act 1955 ('the Act').

The case of the petitioner is that his father was the tenant of the premises bearing H.No. 11-4-333, Chilkalaguda, Secunderabad. Though the petitioner's father was regularly paying the rents, the land-lady declined to receive the rents and there were some litigations before the Rent Controller regarding the deposit of rents, which was allowed. A suit for eviction was also filed by the land-lady on the basis of a letter of consent alleged to be given by the petitioner's father regarding vacating

the premises. On the complaint of the petitioner's father the letter of consent was found to be forged. Eventually the suit filed by the land-lady was held to be not maintainable.

The petitioner further alleges that having failed to obtain his eviction from the premises through the legal process, the land-lady/party respondents herein, approached the 1st respondent in the year 2000 for demolition of the building. The petitioner's father thereupon filed W.P. No.24669/2000 for a direction to the 1st respondent that his objections should be heard before any order (for demolition of the premises) is considered on the basis of the representation dated 11.6.2000, lodged by the land-lady. By the order of this court dated 18.12.2000 the writ petition was disposed of directing the Additional Commissioner of the 1st respondent to give notice and afford an opportunity to the petitioner/tenant and only thereafter pass appropriate orders under the provisions of the MCH Act 1955 ('the Act').

Eventually on 27.7.2004 a notice u/Sec. 459 of the Act was issued to the petitioner stating that the building is in a dilapidated condition and the petitioner was asked to show cause why it should not be pulled down to prevent danger to the habitants. This was followed by a notice dated 17.6.2006 u/Sec. 456 of the Act calling upon the occupier of the premises to vacate the premises within 24 hours. The notice dated 17.6.2006 was preceded by a letter dated 12.5.2006 intimating that an injunction order earlier obtained by the petitioner was vacated by the Additional Chief Judge, City Civil Courts, Hyderabad on 15.4.2006, therefore the petitioner should vacate the premises, which was in a dilapidated condition so as to enable the Corporation to demolish the building.

Against the notice dated 17.6.2006 u/Sec. 456 of the Act,

the petitioner preferred an appeal MA No.82 of 2006 before the Chief Judge, City Small Causes Court, Hyderabad, u/Sec. 454 of the Act. By an order dated 31.1.2007 this appeal was dismissed. The learned Chief Judge in dismissing MA No.82/06 elaborately and cogently considered the material on record. The court held that the total building comprised of 3 portions on the ground floor and two on the first floor. Except the father of the appellant, the others had vacated the premises pursuant to an agreement between them with the land-lady. Thereafter the land-lady had applied to the Corporation for dismantling of the building. At that stage the petitioner's father filed Writ Petition No.24669/2000, which was disposed of directing the Corporation to pass appropriate orders after giving an opportunity to the petitioner therein. The local Municipal Corporator addressed a letter to one of the owners and the owners also addressed a letter dated 23.6.2004 to the Corporation stating that the building is aged about 90 years, likely to collapse and should be demolished. On receiving the notice, the building was inspected and a notice was issued to the petitioner and the owners u/Sec.459 of the Act and in compliance with the direction in WP No. 24669/2000. The court below noted that except the residential ground floor portion in occupation of the petitioner, the remaining building viz., the other two portions in the ground floor and two portions in the first floor were already demolished. The court below also noticed that after receiving the notice u/Sec. 459 of the Act, the petitioner filed OS no. 1041/04 before the First Junior Civil Judge, CCC, Secunderabad, seeking a perpetual injunction against the Corporation from demolishing the building. Initially an interim injunction was granted, which was subsequently vacated on 10.2.2006. The petitioner thereupon filed another

suit OS No.494/05 before the Senior Civil Judge, Secunderabad, for the same relief as in OS No. 1041/05, without disclosing the fact of filing the earlier suit. Again he obtained an *ex parte* interim injunction in that suit, which was subsequently dismissed on merits on 3.10.2005. Aggrieved the petitioner preferred CMA No. 46/05 before the First Addl. Chief Judge, CCC, Secunderabad. The appellate court confirmed the order of the Senior Civil Judge, vacating the interim injunction in OS No. 494/05. CRP No. 2671/06 was preferred by the petitioner to this court against the order dismissing CMA No.46/05. No interim relief has been granted by this court in the revision, noted the Small Causes Court in the order in MA No.82/2000. The petitioner also filed W.P.No. 8760/06, after the dismissal of the CMA, seeking stay of demolition of the premises. No stay was granted. WP No. 4760/06 is still pending. After dismissal of CMA No.46/05 a notice u/Sec. 456 of the Act was issued. On 20.5.2006 a portion of the building was demolished. The petitioner filed yet another suit OS No. 107/06 seeking permanent injunction before the Vacation Judge, City Civil Courts, Hyderabad. After it was made over to the regular court – Junior Civil Judge Court, Secunderabad, it was renumbered as OS No. 614/06. Herein also no interim relief was granted.

The petitioner filed another writ petition No. 10082/06 without disclosing the pendency of W.P No. 8760/06 and another civil suit filed by him and obtained an order of *status quo* from this court on 24.5.2006. Drawing sustenance from the *status quo* order, the petitioner was found (by the Small Causes Court) to have reconstructed the walls, refixed the doors and windows and also to have made additional constructions as per the engineer's report Ex.X14. The petitioner also withdrew the

earlier suits OS No. 1041/04, 494/05 and 614/05 and then filed the appeal MA No. 82/06. The new allegation set out in MA No. 82/06 is that the Corporation had issued Sec. 456 notice altering the date from 7.8.2004 to 17.6.2006.

After setting out the several proceedings instituted by the petitioner, the Small Causes Court analyzed the evidence on record. The petitioner examined an engineer to testify to having inspected the building and to have submitted a report Ex.X4. The oral and documentary evidence on the basis of this inspection is to the effect that the earlier demolition operations had effected the old structure further and that on account of the demolition operations, due to the impact and vibrations internal cracks developed in masonry and rendered the structure prone to deterioration and collapse in future. The court also found that except this portion (in the occupation of the petitioner), the rest of the building was already demolished. Even this portion was partially demolished in May 2006 after a notice. Even from the report Ex.X14 it is clear that the building is in a poor condition with the likelihood of its collapse in due course particularly on account of the additional structures made by the complainant on the strength of a *status quo* order in W.P No. 10082/06. The Small Causes court in its order in MA No.82/06 carefully and cogently considered the other oral and documentary evidence also and came to the conclusion that the building was in a poor and dilapidated condition even prior to the demolition in May 2006 and thereafter it became weaker still and therefore there was no infirmity in the decision of the Corporation that the building was unsafe and should be demolished. All the procedural objections raised by the petitioner to the process preceding the demolition notice were found to be inconsequential. Accordingly the learned Chief Judge, City

Small Causes Court, Hyderabad, rejected the appeal preferred by the petitioner.

The petitioner filed CM SA No.3 of 2007 against the order in MA No.82/06. The Second Appeal was not entertained on the ground that it was not maintainable and therefore the petitioner has filed the present writ petition challenging the notice dated 17.6.2006 issued by the 1st respondent u/Sec. 456 of the Act.

In the writ petition at the hearing today the self-same contentions are urged which have been cogently and carefully considered in MA No.82/06. The 1st respondent Corporation is a statutory authority which is *inter alia* enjoined the duty and function of ensuring the safety of inhabitants of the buildings within its jurisdiction. In exercise of such statutory power the Corporation has, after complying with all the procedural requirements, recorded its satisfaction on the basis of the material before it that the building in the occupation of the petitioner as a tenant, was an old building and in a dilapidated condition posing a threat to the inhabitants. No *mala fides* have been attributed to any individual officer of the respondent-corporation. Even the oral testimony of the engineer and the report which was intensely considered by the Small Causes Court, support the assessment of the Corporation that the building was old, dilapidated and potentially susceptible to collapse.

In the above circumstances and on the basis of the available material on record the petitioner does have any case justifying interdiction of the lawful statutory authority of the 1st respondent-Corporation.

There are no merits in the writ petition, which is accordingly dismissed at the stage of admission. No order as to

costs.

Dt: 12.06.2007 ----------

MAS/pvsn Justice G.Raghuram